

# EXHIBIT D

## Bryan Tyson

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**From:** Bryan Tyson  
**Sent:** Monday, February 3, 2020 9:25 AM  
**To:** 'Kaiser, Mary'; Robert McGuire; Cary Ichter; bbrown@brucepbrownlaw.com; Cross, David D.; Carlin, John P.; Manoso, Robert W.; Alexander Denton; Bryan Jacoutot; Brian Lake; cheryl.ringer@fultoncountyga.gov; Carey Miller; david.lowman@fultoncountyga.gov; dbrody@lawyerscommittee.org; erosenberg@lawyerscommittee.org; hknapp@khlawfirm.com; Josh Belinfante; Bentrott, Jane P.; jpowers@lawyerscommittee.org; kaye.burwell@fultoncountyga.gov; sparks@khlawfirm.com; vrusso@robbinsfirm.com; Cate Berenato  
**Subject:** RE: Curling v. Raffensperger - Delivery of GEMS Databases

Mary,

If the GEMS Databases do not contain machine serial numbers, as the Plaintiffs previously represented to the Court, we do not see a reason to continue searching for the remaining databases because we do not understand how those databases could possibly be relevant. Please let us know immediately what information you still require in order to generate your statistical sample.

Thanks,

Bryan



### Bryan P. Tyson

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**From:** Kaiser, Mary <MKaiser@mofo.com>  
**Sent:** Friday, January 31, 2020 12:30 PM  
**To:** Bryan Tyson <btyson@taylorenghish.com>; Robert McGuire <ram@lawram.com>; Cary Ichter <Clichter@IchterDavis.com>; bbrown@brucepbrownlaw.com; Cross, David D. <DCross@mofo.com>; Carlin, John P. <JCarlin@mofo.com>; Manoso, Robert W. <RManoso@mofo.com>; Alexander Denton <Alexander.Denton@robbinsfirm.com>; Bryan Jacoutot <bjacoutot@taylorenghish.com>; Brian Lake <Brian.Lake@robbinsfirm.com>; cheryl.ringer@fultoncountyga.gov; Carey Miller <carey.miller@robbinsfirm.com>; david.lowman@fultoncountyga.gov; dbrody@lawyerscommittee.org; erosenberg@lawyerscommittee.org; hknapp@khlawfirm.com; Josh Belinfante <Josh.Belinfante@robbinsfirm.com>; Bentrott, Jane P. <JBentrott@mofo.com>; jpowers@lawyerscommittee.org; kaye.burwell@fultoncountyga.gov; sparks@khlawfirm.com; vrusso@robbinsfirm.com; Cate Berenato <Cate.Berenato@robbinsfirm.com>  
**Subject:** RE: Curling v. Raffensperger - Delivery of GEMS Databases

Bryan,

Given the delay of service, the files missing from your GEMS database production, and issues with accessing and processing the data provided—including potential corruption issues—Curling Plaintiffs need until next Friday, February 7, to provide our list of DREs for preservation. We may also need additional information from Defendants since we have learned that the GEMS databases do not contain machine serial numbers needed to isolate specific machines. However, our experts are exploring options to work with the existing data to come up with a reliable statistical sample. We hope to send the sample set sooner than next Friday but it depends on our experts' ability to use the data provided and the timing of obtaining the outstanding data the Court required you to provide for sampling.

Thanks,  
Mary

## MARY KAISER

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**From:** Bryan Tyson <[btyson@taylorenchlish.com](mailto:btyson@taylorenchlish.com)>

**Sent:** Friday, January 31, 2020 9:14 AM

**To:** Robert McGuire <[ram@lawram.com](mailto:ram@lawram.com)>; Cary Ichter <[Clichter@IchterDavis.com](mailto:Clichter@IchterDavis.com)>; [bbrown@brucepbrownlaw.com](mailto:bbrown@brucepbrownlaw.com); Cross, David D. <[DCross@mofo.com](mailto:DCross@mofo.com)>; Carlin, John P. <[JCarlin@mofo.com](mailto:JCarlin@mofo.com)>; Manoso, Robert W. <[RManoso@mofo.com](mailto:RManoso@mofo.com)>; Alexander Denton <[Alexander.Denton@robbinsfirm.com](mailto:Alexander.Denton@robbinsfirm.com)>; Bryan Jacoutot <[bjacoutot@taylorenchlish.com](mailto:bjacoutot@taylorenchlish.com)>; Brian Lake <[Brian.Lake@robbinsfirm.com](mailto:Brian.Lake@robbinsfirm.com)>; [cheryl.ringer@fultoncountyga.gov](mailto:cheryl.ringer@fultoncountyga.gov); Carey Miller <[carey.miller@robbinsfirm.com](mailto:carey.miller@robbinsfirm.com)>; [david.lowman@fultoncountyga.gov](mailto:david.lowman@fultoncountyga.gov); [dbrody@lawyerscommittee.org](mailto:dbrody@lawyerscommittee.org); [erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org); [hknapp@khlawfirm.com](mailto:hknapp@khlawfirm.com); Josh Belinfante <[Josh.Belinfante@robbinsfirm.com](mailto:Josh.Belinfante@robbinsfirm.com)>; Bentrott, Jane P. <[JBentrott@mofo.com](mailto:JBentrott@mofo.com)>; [jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org); [kaye.burwell@fultoncountyga.gov](mailto:kaye.burwell@fultoncountyga.gov); Kaiser, Mary <[MKaiser@mofo.com](mailto:MKaiser@mofo.com)>; [sparks@khlawfirm.com](mailto:sparks@khlawfirm.com); [vrusso@robbinsfirm.com](mailto:vrusso@robbinsfirm.com); Cate Berenato <[Cate.Berenato@robbinsfirm.com](mailto:Cate.Berenato@robbinsfirm.com)>

**Subject:** RE: Curling v. Raffensperger - Delivery of GEMS Databases

- External Email -

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Robert,

As I explained in my email last Friday:

As we advised you regarding the prior production of the November 2018 GEMS Databases, some counties provided only GEMS Reports (not databases) on their CDs, provided blank or unreadable CDs, or provided only text files. We are working to locate those additional county databases, but they are relatively few out of the entire production.

To restate this again: we produced all the databases that were readily accessible from the Secretary's Office and the Archives. The Secretary's office is continuing to search in other locations for the additional databases you identified below as quickly as possible. If they cannot be obtained from the Archives, then we will have to request the databases from counties. We do not yet have a timeline for that process.

Not including the 2018 election databases that you already had, you now have 93% of the databases you requested for the statistical sample (743 of the 795 county databases). We expect that your experts are already making an effort to complete the vast majority of the work involved in creating a statistical sample for most of the counties in the State. Let us know if we are mistaken.

For your questions on preservation, I'll refer you to the transcript of the call with the Court.

Thanks,

Bryan

P.S. I have removed Mr. Wilson from this email.



**Bryan P. Tyson**

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**From:** Robert McGuire <[ram@lawram.com](mailto:ram@lawram.com)>

**Sent:** Thursday, January 30, 2020 12:06 PM

**To:** Bryan Tyson <[btyson@taylorenghish.com](mailto:btyson@taylorenghish.com)>; Cary Ichter <[Clichter@IchterDavis.com](mailto:Clichter@IchterDavis.com)>; Bruce Brown <[bbrown@shipinpax.com](mailto:bbrown@shipinpax.com)>; hmaholdingsllc@gmail.com; Cross, David D. <[DCross@mofo.com](mailto:DCross@mofo.com)>; Carlin, John P. <[JCarlin@mofo.com](mailto:JCarlin@mofo.com)>; Manoso, Robert W. <[RManoso@mofo.com](mailto:RManoso@mofo.com)>; Alexander Denton <[Alexander.Denton@robbinsfirm.com](mailto:Alexander.Denton@robbinsfirm.com)>; Bryan Jacoutot <[bjacoutot@taylorenghish.com](mailto:bjacoutot@taylorenghish.com)>; Brian Lake <[Brian.Lake@robbinsfirm.com](mailto:Brian.Lake@robbinsfirm.com)>; cheryl.ringer@fultoncountyga.gov; Carey Miller <[carey.miller@robbinsfirm.com](mailto:carey.miller@robbinsfirm.com)>; david.lowman@fultoncountyga.gov; dbrody@lawyerscommittee.org; erosenberg@lawyerscommittee.org; hknapp@khlawfirm.com; Josh Belinfante <[Josh.Belinfante@robbinsfirm.com](mailto:Josh.Belinfante@robbinsfirm.com)>; Bentrrott, Jane P. <[JBentrrott@mofo.com](mailto:JBentrrott@mofo.com)>; jpowers@lawyerscommittee.org; kaye.burwell@fultoncountyga.gov; Kaiser, Mary <[MKaiser@mofo.com](mailto:MKaiser@mofo.com)>; sparks@khlawfirm.com; vrusso@robbinsfirm.com; Cate Berenato <[Cate.Berenato@robbinsfirm.com](mailto:Cate.Berenato@robbinsfirm.com)>

**Cc:** Ritchie Wilson <[rawilson52@gmail.com](mailto:rawilson52@gmail.com)>

**Subject:** RE: Curling v. Raffensperger - Delivery of GEMS Databases

Bryan, can you please respond to my message below?

We take your silence thus far to mean the State acknowledges that our ability to provide a list of DREs on 2/3 depends on the State getting us the databases that your side told the Court on 1/17 that we would have by 1/24. We are still waiting for complete databases.

We want to be responsive as possible to the State's preservation concerns, but we obviously can't release DREs until and unless we get the info the State promised. So please let us know—when can we expect to receive the complete GEMS databases?

Thanks in advance.

Best,  
Robert McGuire

ROBERT A. MCGUIRE, III  
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**From:** Robert McGuire

**Sent:** Monday, January 27, 2020 9:42 AM

**To:** Bryan Tyson <[btyson@taylorenghish.com](mailto:btyson@taylorenghish.com)>; Cary Ichter <[Clichter@IchterDavis.com](mailto:Clichter@IchterDavis.com)>; Bruce Brown <[bbrown@shipinpax.com](mailto:bbrown@shipinpax.com)>; [hmaholdingsllc@gmail.com](mailto:hmaholdingsllc@gmail.com); Cross, David D. <[DCross@mofo.com](mailto:DCross@mofo.com)>; Carlin, John P. <[JCarlin@mofo.com](mailto:JCarlin@mofo.com)>; Manoso, Robert W. <[RManoso@mofo.com](mailto:RManoso@mofo.com)>; Alexander Denton <[Alexander.Denton@robbinsfirm.com](mailto:Alexander.Denton@robbinsfirm.com)>; Bryan Jacoutot <[bjacoutot@taylorenghish.com](mailto:bjacoutot@taylorenghish.com)>; Brian Lake <[Brian.Lake@robbinsfirm.com](mailto:Brian.Lake@robbinsfirm.com)>; [cheryl.ringer@fultoncountyga.gov](mailto:cheryl.ringer@fultoncountyga.gov); Carey Miller <[carey.miller@robbinsfirm.com](mailto:carey.miller@robbinsfirm.com)>; [david.lowman@fultoncountyga.gov](mailto:david.lowman@fultoncountyga.gov); [dbrody@lawyerscommittee.org](mailto:dbrody@lawyerscommittee.org); [erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org); [hknapp@khlawfirm.com](mailto:hknapp@khlawfirm.com); Josh Belinfante <[Josh.Belinfante@robbinsfirm.com](mailto:Josh.Belinfante@robbinsfirm.com)>; Bentrott, Jane P. <[JBentrott@mofo.com](mailto:JBentrott@mofo.com)>; [jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org); [kaye.burwell@fultoncountyga.gov](mailto:kaye.burwell@fultoncountyga.gov); Kaiser, Mary <[MKaiser@mofo.com](mailto:MKaiser@mofo.com)>; [sparks@khlawfirm.com](mailto:sparks@khlawfirm.com); [vrusso@robbinsfirm.com](mailto:vrusso@robbinsfirm.com); Cate Berenato <[Cate.Berenato@robbinsfirm.com](mailto:Cate.Berenato@robbinsfirm.com)>

**Cc:** Ritchie Wilson <[rawilson52@gmail.com](mailto:rawilson52@gmail.com)>

**Subject:** RE: Curling v. Raffensperger - Delivery of GEMS Databases

Bryan,

Thank you for the delivery of disks containing certain GEMS databases to Cary Ichter's office on Friday (albeit right at the closing of business.)

The purpose of this email is to advise you that Coalition Plaintiffs have inventoried the files received and found that quite a few necessary files are missing. I have listed them below based on our initial inventory. It is possible that Ritchie Wilson's sample selection work will locate other missing or unusable data, and we will promptly inform you if that occurs.

Will you please let us know when your client can provide all the data for the elections that the State promised at the hearing (and that you represent as having been delivered to us in your email copied below)?

Note that the time frame for Coalition's communication of a complete selected sample (and thus of the DRE machines that must continue to be preserved) will necessarily have to be extended past February 3<sup>rd</sup>—at least in part, with respect to the counties we do not yet have info for. Please confirm that the State does not object to extending the February 3<sup>rd</sup> deadline for our DRE listing until such time as (1) all information that the State promised to provide has been made available to us and (2) we have had an additional ten days from then—which is the amount of time that the Court considered reasonable for us to review the databases assuming their complete production on January 24<sup>th</sup> (which has not happened).

We oppose the proposal for destruction of any DRE system equipment until our sample selection work has been completed. From the Coalition Plaintiffs' perspective, our necessary discovery will be impaired if the DREs are not kept in working order or if the records on them are in any way damaged by the recycler. The State has previously told the Court that all this equipment would be preserved. Preservation is provided for in the State's contract with the recycler. Setting aside the State's litigation duty not to destroy electronic records from the

identified elections until Plaintiffs agree that their sample needs have been satisfied, the State also has two-year records retention duties under federal and state laws. Given all this, the cost of preservation cannot justify rushing now to destroy DREs prematurely. Preserving the equipment for the brief amount of additional time now required to permit us to select and conduct our necessary discovery work does not create any unanticipated (much less undue) burden on the State.

The list of missing files based on our preliminary review are the following:

Election: 2016 03 01 Presidential Preference Primary

Total Counties Found: 153

Missing Counties:

015 bryan

026 chattahoochee

091 long

104 morgan

115 polk

153 wheeler

\*A note about Macon County in the 2016 General Election: we received an unusable a file for this county. it is just a Windows Shortcut file, not the actual database.

Election: 2016 05 24 Primary and NP General

Total Counties Found: 150

Missing Counties:

001 appling

017 burke

026 chattahoochee

044 dekalb

052 elbert

070 hancock

104 morgan

122 rockdale

149 warren

Election: 2016 11 08 General Election

Total Counties Found: 146

Missing Counties:

023 catoosa

026 chattahoochee

032 clinch

037 cook

038 coweta

056 fayette

057 floyd

059 franklin

062 glascock

094 macon (See above note)  
100 miller  
152 webster  
159 worth

Election: 2018 05 22 Primary and NP General

Total Counties Found: 145

Missing Counties:

026 chattahoochee  
033 cobb  
040 crisp  
042 dawson  
054 evans  
062 glascock  
065 grady  
069 hall  
074 heard  
078 jackson  
130 talbot  
144 union  
150 washington  
152 webster

Election: 2018 07 24 Primary Runoff

Total Counties Found: 149

Missing Counties:

001 appling  
042 dawson  
059 franklin  
062 glascock  
106 muscogee  
127 stephens  
142 turner  
144 union  
152 webster  
156 wilcox

In the event the State has made an incomplete production because certain database records are not in the Secretary's possession or in the archives, the State's counsel has previously told the Court that a copy of the GEMS post-election databases is required to be filed with the Superior Court of the county conducting the election and that a Court Order for the release of copies of that data can be requested from the Superior Courts. If the State cannot go back and obtain complete copies of the GEMS databases from the Secretary's own files or from the archives, then one possible solution would be for the State to request copies of the missing databases from the Clerks of the relevant Superior Courts.

Thank you for your prompt attention and response.

Best,  
Robert McGuire

ROBERT A. MCGUIRE, III

\*\*\* NOTE NEW CONTACT DETAILS BELOW \*\*\*

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**From:** Bryan Tyson <[btyson@taylorenghish.com](mailto:btyson@taylorenghish.com)>

**Sent:** Friday, January 24, 2020 1:26 PM

**To:** Cary Ichter <[Clichter@IchterDavis.com](mailto:Clichter@IchterDavis.com)>; Bruce Brown <[bbrown@shipinpax.com](mailto:bbrown@shipinpax.com)>; [hmaholdingsllc@gmail.com](mailto:hmaholdingsllc@gmail.com); Cross, David D. <[DCross@mofo.com](mailto:DCross@mofo.com)>; Carlin, John P. <[JCarlin@mofo.com](mailto:JCarlin@mofo.com)>; Manoso, Robert W. <[RManoso@mofo.com](mailto:RManoso@mofo.com)>; Alexander Denton <[Alexander.Denton@robbinsfirm.com](mailto:Alexander.Denton@robbinsfirm.com)>; Bryan Jacoutot <[bjacoutot@taylorenghish.com](mailto:bjacoutot@taylorenghish.com)>; Brian Lake <[Brian.Lake@robbinsfirm.com](mailto:Brian.Lake@robbinsfirm.com)>; Bryan Tyson <[btyson@taylorenghish.com](mailto:btyson@taylorenghish.com)>; [cheryl.ringer@fultoncountyga.gov](mailto:cheryl.ringer@fultoncountyga.gov); Carey Miller <[carey.miller@robbinsfirm.com](mailto:carey.miller@robbinsfirm.com)>; [david.lowman@fultoncountyga.gov](mailto:david.lowman@fultoncountyga.gov); [dbrody@lawyerscommittee.org](mailto:dbrody@lawyerscommittee.org); [erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org); [hknapp@khlawfirm.com](mailto:hknapp@khlawfirm.com); Josh Belinfante <[Josh.Belinfante@robbinsfirm.com](mailto:Josh.Belinfante@robbinsfirm.com)>; Bentrott, Jane P. <[JBentrott@mofo.com](mailto:JBentrott@mofo.com)>; [jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org); [kaye.burwell@fultoncountyga.gov](mailto:kaye.burwell@fultoncountyga.gov); Kaiser, Mary <[MKaiser@mofo.com](mailto:MKaiser@mofo.com)>; Robert McGuire <[ram@lawram.com](mailto:ram@lawram.com)>; [sparks@khlawfirm.com](mailto:sparks@khlawfirm.com); [vrusso@robbinsfirm.com](mailto:vrusso@robbinsfirm.com); Cate Berenato <[Cate.Berenato@robbinsfirm.com](mailto:Cate.Berenato@robbinsfirm.com)>

**Subject:** Curling v. Raffensperger - Delivery of GEMS Databases

Counsel:

Consistent with the conversation with the Court last Friday, the following GEMS Databases are being delivered by courier to Mr. Ichter's office and are being sent by Fedex Saturday delivery to Mr. Cross and Ms. Kaiser's office:

1. 2016 Presidential Preference Primary
2. 2016 General Primary and Nonpartisan General
3. 2016 November General Election
4. 2017 CD 6 Special Election
5. 2017 CD 6 Special Election Runoff
6. 2018 General Primary and Nonpartisan General
7. 2018 General Primary Runoff

This list is consistent with what Plaintiffs agreed was the list of elections they needed during the call with the Court last week. Transcript of January 17, 2020 Teleconference at 26:23-27:23. There were only three statewide elections in 2016, not four as we believed on the call. The 2016 General Primary Runoff did not include any statewide offices, but rather Congressional District 3 and a handful of legislative seats. See <https://results.enr.clarityelections.com/GA/62848/174629/en/summary.html> Consistent with Plaintiffs' request for statewide elections only, Transcript at 14:12-14, 23:11-13, we have not included the GEMS Databases from that election.

These databases are being produced on six CDs, one for each election except that both 2017 elections are on a single disc, with the data stored in the format maintained by the Georgia Archives and/or the Elections Division of the Secretary of State's office. Each statewide election leads to 159 individual CDs from counties, which have been grouped together by election. As we advised you regarding the prior

production of the November 2018 GEMS Databases, some counties provided only GEMS Reports (not databases) on their CDs, provided blank or unreadable CDs, or provided only text files. We are working to locate those additional county databases, but they are relatively few out of the entire production.

Following the call with the Court on January 17, Ms. Kaiser and Mr. McGuire sent three different emails, asking a variety of questions about additional parameters for the review of the GEMS Databases. State Defendants provide the following answers:

1. To Ms. Kaiser's question of January 17: State Defendants have no objection to Dr. Woods and his team conducting their analysis at their offices, so long as he and his team adhere to the protective order in this matter and the limited purpose of the review. Transcript at 36:11-18.
2. To Mr. McGuire's question of January 17: State Defendants will only be providing post-election databases for each election. The Court specifically limited the analysis of the GEMS databases to identifying machines, not for mining through the databases for other information. Transcript at 36:11-18. Because the pre-election databases are created before any memory cards are associated with particular DRE units for an election, we will be providing the post-election databases for the listed elections. If you can provide us with additional information about why the pre-election databases are relevant to the identification of DRE units used in particular elections, we will reconsider your request.
3. To Mr. McGuire's question of January 21: State Defendants appreciate the identification of Mr. Wilson as the individual who will be undertaking the analysis under the supervision of Mr. Ichter.
4. To Mr. McGuire's question of January 21: State Defendants do not object to Mr. Wilson conducting his analysis in Ann Arbor, so long as he abides by the general protective order in this case and is under the supervision of "senior personnel." Transcript at 32:24-34:25. Like Dr. Woods, Mr. Wilson's analysis of the GEMS databases is limited to identifying machines, and not conducting other discovery or analysis on the databases. Transcript at 36:11-18.
5. To Mr. McGuire's question of January 21: State Defendants object to Ms. Marks having any part in the analysis or review of the GEMS Databases being produced. The Court specifically limited the analysis of the GEMS Databases to identifying machines, not a general review of the databases themselves and required someone "at least a step removed" from the PR efforts of the Coalition to conduct the analysis. Transcript at 36:11-18, 34:9-13. Ms. Marks does not meet that description and State Defendants will not agree to allow her to have any part of the analysis.
6. To Mr. McGuire's question of January 21: State Defendants are only producing post-election databases for the reasons outlined in response to item 2.

We further propose that, in lieu of a statistical sample (or if a sample cannot be provided on the timeline set by the Court), State Defendants collect the units currently held by counties that were segregated by earlier orders of the Court and preserve those units for whatever the Court may order, with authorization to destroy the remaining units. This approach imposes almost no burden on anyone to search for machines and ensures that units that have not been used since the 2017 special election will be preserved for whatever the Court may order if the Court determines the DRE claims are not moot. *See* Transcript at 27:24-29:6.

The cover letter being sent with each set of CDs is attached. As indicated in that letter, if you require any further technical information to review the databases, please let us know and we will provide it immediately.

Thanks,

Bryan



**Bryan P. Tyson**

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